DATUK HUSAM MUSA v. UTUSAN MELAYU (M) BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
SU GEOK YIAM J
[CIVIL SUIT NO: S-23-23-2010]
30 JANUARY 2015

TORT: *Defamation – Libel – Libellous article published in newspaper – Plaintiff claimed impugned articles imputed certain characteristics or attributes to him – Whether words complained of, in their natural and ordinary meaning, capable of bearing imputations ascribed to them by plaintiff – Whether imputations tendered to lower plaintiff in estimation of right thinking members of society – Whether words in impugned report read in its entirety defamatory of plaintiff – Whether imputations pleaded by plaintiff strained, forced or utterly unreasonable interpretation of words in impugned report*

This was the plaintiff's application against the defendants for libel allegedly contained in a published news report. The report appeared under a poser as the main headline 'Husam letak jawatan?' and it was continued under a sub-heading 'Nik Aziz beri cuti lima hari untuk tenangkan fikiran' ('the impugned report'). The plaintiff contended in his statement of claim ('SOC') that the impugned passages, in the impugned report, in their natural and ordinary meaning to the general public imputed certain characteristics or attributes to him as pleaded in his SOC which were defamatory of him. On the other hand, the defendants denied that the words complained of gave rise to the meanings pleaded in the SOC and contended that the impugned passages in their natural and ordinary meaning did not bear or were not capable of being understood to give rise to the meanings pleaded in the plaintiff's SOC or any defamatory imputation of and concerning the plaintiff. Following that, the defendants also contended that the words complained of read in the proper context of the entire impugned report and the circumstances in which it was published, were neither capable of bearing the alleged natural and ordinary meanings pleaded in the plaintiff's SOC or any defamatory meaning of and concerning the plaintiff. In the premises, the defendants contended that the plaintiff's SOC did not disclose a cause of action for defamation and/or the claim by the plaintiff against the defendants was, *inter alia*, frivolous, scandalous and/or an abuse of process of the court. Hence, the main issues to be decided were, *inter alia*, (i) whether the words complained of, in their natural and ordinary meaning, were capable of bearing the imputations ascribed to them by the plaintiff; (ii) whether the imputations tendered to lower the plaintiff in the estimation of right thinking members of society generally; (iii) whether the words in the impugned report read in its entirety were defamatory of the plaintiff; and (iv) whether the imputations pleaded by the plaintiff in the SOC were a strained, forced or utterly unreasonable interpretation of the words in the impugned report.

Held (dismissing plaintiff's claims with costs):

(1) Upon reading the entire impugned report, the ordinary reasonable fair minded reader would realise that the plaintiff was not resigning after all and would reasonably infer that it was just the work of conspirators against the plaintiff given the Menteri Besar's acceptance of the plaintiff's explanation, amongst others. More importantly, the ordinary reasonable fair minded reader or the right thinking members of society generally would say that the entire speculation was pure rumours and untrue. Therefore, the bane and the antidote must be taken together. (paras 116 & 117)

(2) Having conducted a detailed and exhaustive textual analysis of the words complained of and the impugned passages in the impugned report, the court was satisfied that the impugned report read in its entirety and construed objectively could not reasonably be capable of giving rise to any of the contended imputations by the plaintiff in their natural and ordinary meaning to the right thinking members of society generally and it did not as a whole have a tendency to lower the plaintiff in the estimation of right thinking members of society generally. (para 120)

(3) The ordinary reasonable fair minded reader who read the words complained of in the context of the entire impugned report, would perceive the plaintiff as an important leader in Kelantan who was indispensable to the Menteri Besar and commanding great respect from the spiritual leader of PAS to the extent that there were parties who were out to oust him from the state administration. It further characterised the plaintiff as a principled and selfless politician and a leader who was prepared to put the party's interest above his own in the event he became a liability to the party. Finally, the report conclusively dispelled the speculation of his intended resignation as being purely rumours and as being untrue through no less than the official source of the party. In the circumstances, an ordinary reasonable fair minded reader would not be reasonably justified in coming to the conclusion that the words complained of read in its entirety were defamatory of the plaintiff. (paras 122-125)

(4) In the instant case, the words in the impugned article read as a whole did not impute to the plaintiff any dishonest or discreditable conduct or motive or a lack of integrity. The ordinary reader did not and would not seize on a defamatory meaning when there were good interpretations available. In any event, it was not permissible to make an imputation or inference based on existence of facts undisclosed in the impugned report. The imputations pleaded by the plaintiff were a strained, forced or utterly unreasonable interpretation of the words in the impugned report. Accordingly, the words complained of were not defamatory as contended by the plaintiff from the primary meaning of the language used in it. (para 126)

Case(s) referred to:

Capital and Counties Bank v. Henty [1880] 5 CPD 514 ***(refd)***

Charleston and Another v. News Group Newspapers Ltd and Another [1995] 2 All ER 313 ***(refd)***

Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA ***(refd)***

Datuk Husam Musa v. The New Straits Times Press (M) Bhd & Ors [2013] 1 LNS 798 HC ***(refd)***

Jones v. Skelton [1963] 3 All ER 952 PC ***(refd)***

Keluarga Communication Sdn Bhd v. Normala Samsudin & Another Appeal [2006] 2 CLJ 46 CA ***(refd)***

Lewis v. Daily Telegraph Ltd [1963] 2 All ER 151 ***(refd)***

McCartan Turkington Breen (a firm) v. Times Newspapers Ltd [2000] 4 All ER 913 ***(refd)***

Nevill v. Fine Art and General Insurance Co [1895-99] All ER Rep 164 ***(refd)***

Sim v. Stretch [1936] 2 All ER 1237 ***(refd)***

Soh Chun Seng v. CTOS-emr Sdn Bhd [2004] 5 CLJ 46 HC ***(refd)***

Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] 1 LNS 146 HC ***(refd)***

Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors [1995] 1 LNS 304 HC ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 59 r. 8(b)

For the plaintiff - Ridha Abdah Subri (Siti Maspuah Maulan with him); M/s Kevin & Co

For the defendants - Mohana Kumar; M/s Shafie & Mohan

Reported by S Thara

JUDGMENT

Su Geok Yiam J:

Plaintiff's suit

[1] The plaintiff sued the defendants for libel allegedly contained in a news report published on 22 November 2009 in a newspaper.

[2] The news report appeared under a poser as the main headline "Husam letak jawatan?" on the front page of the newspaper and it is continued under a sub-heading "Nik Aziz beri cuti lima hari untuk tenangkan fikiran" on p. 2 of the newspaper ("the impugned news report").

[3] The plaintiff took umbrage over some of the contents of the impugned news report and some three months later issued a writ of summons ("writ") together with a statement of claim ("SOC") against the defendants claiming general damages, aggravated and exemplary damages totalling RM10 million and also costs for the alleged libel in the impugned news report.

[4] The plaintiff is a politician from the political party commonly known by its acronym "PAS" in Malay which stands for "Parti Se-Islam Malaysia".

[5] At the material time, the plaintiff was amongst the top echelon leadership of PAS in the state of Kelantan ("PAS Kelantan") by virtue of his holding the position of Deputy Commissioner II of PAS Kelantan.

[6] He was in fact the third in line in the PAS Kelantan after YAB Tuan Guru Dato Nik Abdul Aziz Nik Mat (the Menteri Besar of Kelantan, who was also the Spiritual Leader of PAS as well as the Commissioner of PAS Kelantan) and Datuk Ahmad Yaacob (who was the Deputy Menteri Besar of Kelantan and the Deputy Commisioner 1 of PAS Kelantan at the material time).

[7] At the same time, the plaintiff was, *inter alia*, the PAS State Assemblyman for the constituency of Salor in Kelantan.

[8] He was also a senior two terms State Executive Councillor for the state of Kelantan and at the material time, he held the Economic Planning, Finance and State Welfare portfolios in the Kelantan government.

[9] In that capacity, he had assisted the Menteri Besar in administering and managing the state of Kelantan.

[10] He was also at the material time a member of the PAS Kelantan Liaison Body.

[11] The first defendant is a public company incorporated under the Companies Act 1965.

[12] It is the owner, publisher and printer of the daily newspaper "Utusan Malaysia" and its Sunday edition "Mingguan Malaysia".

[13] The newspaper concerned in the instant case is "Mingguan Malaysia" ("the newspaper").

[14] As its name suggests, the newspaper is a Malay language newspaper.

[15] The second defendant was, at the material time, a journalist employed by the first defendant at its Kota Bharu Bureau and is the writer of the impugned news report.

[16] At the time he testified in the trial against the plaintiff, he was the Chief of the Kota Bharu Bureau of the first defendant.

[17] The third defendant is not a legal entity capable of being sued and it is also undisputed that there is no such position in the editorial makeup of the first defendant's newspaper.

[18] Neither PAS nor the other persons named in the impugned news report are defendants or plaintiffs in this suit.

The Trial

[19] At the trial, the parties called eight witnesses altogether.

[20] The plaintiff called three witnesses.

[21] They are Sanusi bin Hj Osman, the Chief Operations Officer of Perbadanan Menteri Besar Kelantan (PMBK), as PW1; the plaintiff himself as PW2; and Rusydee bin Abdullah, the Timbalan Pengarah, Unit Perancang Ekonomi (UPEN), Kelantan, as PW3.

[22] The witness statement of Sanusi bin Hj Osman (PW1) was marked 'P1', the witness statement of the plaintiff (PW2) was marked 'P2' and the witness statement of Rusydee bin Abdullah (PW3) was marked 'P4'.

[23] The defendants called five witnesses, four of whom were subpoenaed.

[24] They are Azran Fitri bin Abdul Rahim, the second defendant, as DW1, Tuan Syed Azidi bin Syed Abdul Aziz ("Syed Azidi"), the plaintiff's aide as DW2; Muhafandi bin Muhamad, a reporter from Astro Awani as DW3; Haspaizi bin Mohd Zain, a reporter from Berita Harian, as DW4; and Mohd Zailani bin Abdul Rahman, a reporter from Sinar Harian, as DW5.

[25] The witness statement of Azran Fitri bin Abdul Rahim (DW1) was marked 'D5'.

[26] The rest of the defendants' four witnesses gave evidence by way of oral testimonies.

Decision Of The Court

[27] On 28 October 2014, after the conclusion of the trial and after having considered the evidence before the court in the light of the submissions of the plaintiff and the defendants on liability, the court agreed with and accepted the submissions of the defendants that the plaintiff had failed to prove his claim on liability against the defendants.

[28] The court then dismissed the plaintiff's suit against the defendants on liability with costs.

[29] Upon the invitation of the court, the defendants proposed a sum of RM75,000 as costs on the following grounds:

(i) there was an application to amend by the plaintiff which was dismissed by the court;

(ii) the plaintiff's claim was for a sum of RM10 million in damages.

(iii) the first defendant is a public listed company and a claim of such magnitude has serious adverse repercussions on the company by virtue of the serious concerns of its shareholders.

(iv) the conduct of the plaintiff as provided in O. 59 r. 8(b) of the Rules of Court ("RC 2012") justifies the amount of costs proposed by the defendants. The press conference was only called three days after the impugned news report was published. At the trial, the court heard the plaintiff's insistence that Syed Azidi was a mere acquaintance but one of the plaintiff's own witnesses and the defendants' witnesses testified that both of them have a close relationship.

[30] The plaintiff counter-proposed a sum of RM10,000 to RM15,000 as costs.

[31] The court awarded a sum of RM45,000 as costs to the defendants. The court was of the view that this amount was fair and reasonable because the four reasons that were cited by the defendants to the court had merits and the sum of RM10,000 to RM15,000 which was proposed by the plaintiff was too low.

[32] Being dissatisfied with the decision of the court, on 26 November 2014, the plaintiff filed a notice of appeal to the Court of Appeal against the decision of the court.

Reasons For The Decision Of The Court

[33] Below are the reasons why the court decided in that manner:

The Impugned News Report

[34] The court shall first deal with the impugned news report.

[35] The court notes that the impugned news report has, at the behest of the plaintiff's solicitors and the subsequent agreement of the parties, been placed in Part A of the common bundle of documents (bundle "B").

[36] The effect of the same in law is that the authenticity of the document and the truth of its contents are admitted.

[37] As stated earlier in this judgment, the impugned news report was published on the front page and continued on p. 2 of the newspaper.

[38] The plaintiff claims that several passages contained in the impugned news report on the front page and on the continuation page were defamatory of him.

[39] Due to its importance, the full text in the body of the impugned news report (with paragraph numbers added) which the plaintiff claims, is libellous of him is reproduced below.

[40] The words complained of or the impugned passages (in paras. 1, 3, 4, 7 and 8) are underlined:

> 1. KOTA BHARU 21 Nov. - *Timbalan Pesuruhjaya II Pas Kelantan. Datuk Husam Musa (gambar)* ***dikatakan*** *mahu melepaskan semua jawatan dalam parti dan juga kerajaan yang merupakan satu lagi episod yang mengambarkan perpecahan dan kekusutan dalam parti itu.*

2. *Namun hasrat itu tidak dipersetujui oleh Mursyidul Am Pas yang juga Menteri Besar Kelantan, Datuk Nik Abdul Aziz Nik Mat.*

3. *Nik Aziz sebaliknya memberikan cuti selama lima hari bermula hari ini kepada Husam yang juga exco kanan kerajaan negeri untuk berehat dan menenangkan fikiran.*

4. *Tindakan Husam untuk melepaskan semua jawatan dalam parti dan kerajaan yang **dikatakan berpunca daripada** pendedahan kemelut dalaman Perbadanan Menteri Besar Kelantan (PMBK) yang diterajui Ir Abdul Ariffahmi Ab Rahman.*

5. *Abdul Ariffahhmi yang kini sedang disiasat Suruhan Pencegahan Rasuah Malaysia (SPRM) merupakan menantu Nik Abdul Aziz.*

Lihat muka 2

Sambungan dari muka 1

Husam letak jawatan?

Nik Aziz beri cuti lima hari untuk tenangkan fikiran

6. *Namun Pas Kelantan melalui Setiausaha Badan Perhubungannya, Mohd Zaki Ibrahim berkata, perkara itu hanya khabar angin dan mereka tidak mahu mencampuri isu yang dihadapi Nik Abdul Aziz kerana menyifatkan ia tidak ada kena-mengena dengan politik.*

7. *Sumber memberitahu, hasrat Husam untuk berundur telah dikemukakannya kepada Nik Abdul Aziz yang juga Pesuruhjaya Pas Kelantan pada pertemuan empat mata Selesa lalu.*

8. *"Husam bertemu dengan Nik Abdul Aziz untuk menjelaskan bahawa **beliau tidak terlibat atau menjadi dalang disebalik apa yang berlaku dalam PMBK dan penjelasan itu diterima, tetapi hasratnya untuk meletakkan jawatan ditolak".***

9. "Nik Abdul Aziz mengumumkan Husam cuti selama lima hari bermula hari ini pada mesyuarat Badan Perhubungan Pas Kelantan dikediaman resminya, JKR 10 pagi tadi. Beliau (Husam) tidak hadir pada mesyuarat ini" kata sumber itu kepada Mingguan Malaysia disini hari ini.

10. *Hari ini, sebuah portal berita melaporkan Husam mendakwa wujud konspirasi untuk menyingkirkan beliau daripada daripada pentadbiran kerajaan negeri dengan mencetuskan perbalahan diantara beliau dan Nik Abdul Aziz.*

11. Malah **khabar angin** menyatakan bahawa Mursyidul Am Pas itu sedang menimbangkan untuk menggugurkan Husam daripada barisan Exco Kelantan ekoran isu pemecatan Syed Azidi Syed Abdu Aziz sebagai Pengarah Perhubungan Korporat PMBK minggu lalu.

12. Syed Azidi yang lebih dikenali dengan laman blognya Kickdefella, pula dilihat sebagai antara orang kanan Husam.

13. *Sumber itu berkata, dalam tempoh cuti tersebut, Husam juga akan menjalani pembedahan tulang belakang selepas ditangguhkan sejak dua bulan lalu.*

14. *"Husam sebelum ini beberapa kali menyatakan kesediaanya untuk berundur sekiranya beliau menjadi liabiliti kepada parti".*

15. *"Tetapi khidmat beliau masih diperlukan dalam membantu Nik Abdul Aziz mentadbir negeri ini," katanya.*

16. *Sementara itu, Mohd Zaki menafikan perkara tersebut dan menyifatkannya sebagai khabar angin.*

17. Katanya, Pas Kelantan tidak mahu mencampuri isu *berkaitan yang dihadapi Nik Abdul Aziz kerana ia tidak ada kena mengena soal politik.*

18. *"Ia khabar angin sahaja dan jika benar sudah tentu dalam mesyuarat hari ini ada dibincangkan (perkara ini)".*

19. *"Kita tidak pernah membincangkan soal ini, sebaliknya ia masalah pentadbiran yang boleh diselesaikan sendiri Tok Guru (Nik Aziz) selaku Menteri Besar," katanya.*

(emphasis added)

Were The Impugned Passages Defamatory Of The Plaintiff?

[41] The court shall now deal with the core issue of the plaintiff's suit against the defendants.

[42] Were the impugned passages in the impugned news report as reproduced above defamatory of the plaintiff?

[43] In his statement of claim (which particularises the imputations the plaintiff relies on for the plaintiff's alleged cause of action in defamation), the plaintiff claims that the impugned passages, in the impugned news report, in their natural and ordinary meaning to the general public would mean or be understood to mean that he was:

(i) a person who took advantage to pressure other people;

(ii) dishonest to his colleagues;

(iii) fond of quarrelling and conflict;

(iv) divisive;

(v) easily discouraged in the struggle;

(vi) a flip flop politician;

(vii) having difficulty listening to and accepting the true views of others;

(viii) cocky and arrogant.

[44] In short, the plaintiff contends that the impugned news report imputes to him those very characteristics or attributes pleaded in para. 13 of his SOC which are defamatory of him.

[45] The court notes that the subject matter of the impugned news report revolves around his public life as a politician as opposed to his private life.

[46] The defendants in their statement of defence have denied that the words complained of give rise to the meanings pleaded in para. 13 of the SOC and have further contended that the impugned passages in their natural and ordinary meaning do not bear or are they capable of being understood to give rise to the natural and ordinary meanings pleaded in the plaintiff's SOC or any defamatory imputation of and concerning the plaintiff.

[47] The defendants further contend that the words complained of read in the proper context of the entire impugned news report and the circumstances in which it was published, were neither capable of bearing the alleged natural and ordinary meanings pleaded in the plaintiff's SOC or any defamatory meaning of and concerning the plaintiff.

[48] In the premises, the defendants contend that the plaintiff's SOC does not disclose a cause of action for defamation and/or the claim by the plaintiff against the defendants is, *inter alia*, frivolous, scandalous and/or an abuse of process of the court.

What Are The Three Essential Elements Which Must Be Proved By A Plaintiff In A Cause Of Action For Defamation?

[49] It is trite that to establish a cause of action for defamation, the burden of proving the following three essential elements on a balance of probability against the defendant is squarely on the plaintiff:

(a) The plaintiff must demonstrate that the statement bears the defamatory imputations that he contends;

(b) The defamatory imputations must refer to or reflect upon the plaintiff; and

(c) The statement must have been published to a third party by the defendant.

The Defendants' Main Submissions

[50] The thrust of the defendants' submissions in opposing the plaintiff's claim herein is limited to and may conveniently be summarised as follows:

(a) The words complained of read and construed in its entire context are not capable of bearing any meaning that is defamatory of the plaintiff or are in fact defamatory of the plaintiff (as contended by the plaintiff) in all the circumstances of this case and as a consequence thereof the plaintiff has failed to disclose a cause of action for defamation;

(b) In the alternative, the defence of qualified privilege including responsible journalism as pleaded in the statement of defence, will avail the defendants in all the circumstances of this case. The defences of

justification of an alternative meaning to that contended by the plaintiff (the 'Lucas Box' meanings) as well as the defence of fair comment on a matter of public interest are not being pursued by the defendants; and

(c) In the event that the defendants are found to be liable to the plaintiff, there are powerful mitigating circumstances which would minimise or obliterate any damages that could be awarded in all the circumstances and facts established in this case.

Whether The Words Complained Of, In Their Natural And Ordinary Meaning, Are Capable Of Bearing The Imputations Ascribed To Them By The Plaintiff And Whether They Are In Fact Defamatory Of Him?

[51] What is the law?

[52] In *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461; [1999] 1 MLJ 371, at pp. 374A to 375, Gopal Sri Ram JCA (later FCJ) speaking for the Court of Appeal postulated the following two-staged approach in evaluating the words complained of:

> The appellant took umbrage over the article. In his statement of claim, he alleged that the natural and ordinary meaning of the words in the offending article meant or were understood to mean, *inter alia*, that he the appellant was a cheat and that he was guilty of issuing false statements to the press with the intention of gaining popularity. Or, as his counsel put it in argument before us, the article conveyed the meaning that the appellant was untrustworthy ...
>
> It cannot, I think, be doubted that the first task of a court in an action for defamation is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published. As Lord Morris put it in *Jones v. Skelton* [1963] 3 All ER 952 at p. 958:
>
> > The ordinary and natural meaning of the words may be either the literal meaning or it may be implied or inferred or an indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of the ordinary and natural meaning of the words (see *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 151) The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

> In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory …
>
> The article in the present instance when read as a whole clearly suggests that the appellant is a person who, under the guise of doing service, was in fact making false statements in order to deceive the people of Lukut. The implication is that the appellant is a man given to deception and is untrustworthy. I think that there can be no doubt that to say of a man that he is a cheat and a liar is a serious defamation of him. It has the effect of lowering the appellant in the estimation of right-thinking members of society generally. It follows that the learned judge in the present case clearly fell into error when he held that the words complained of were not defamatory of the appellant.
>
> Having decided whether the words complained of are capable of bearing a defamatory meaning, the next step in the inquiry is for the court to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of a particular case.

[53] In *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] 1 LNS 304; [1996] 1 MLJ 393, Richard Malanjum J (later JCA, FCJ and CJSS) having referred to the full text of the impugned article therein as, *inter alia*, "the words complained of" expressed in clearer terms the two-staged approach to the construction of the impugned article as follows at p. 401H to 402D:

> Thus, in determining on the question of liability, there are four issues which I must address to in my mind. And the first issue to be considered is:
>
> (a) whether the words complained of, in their natural and ordinary meaning, bear the meaning ascribed to by the plaintiff and are defamatory of him.
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> …
>
> A(i) Issue (a)
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> …
>
> On issue (a), it is one of construction of the words complained of and at the same time to determine if they were capable of and in fact defamatory of the plaintiff.

[54] The above legal principle was succinctly stated by the Privy Council in *Jones v. Skelton* [1963] 3 All ER 952, at p. 958, wherein Lord Morris of Borth-y-Gest, in giving the judgment of the board, and in holding that the words complained of therein were incapable of being defamatory stated as follows:

A It is well settled that the question whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for decision by the court. If the words are so capable then it is a question for the jury to decide whether the words do in fact convey a defamatory meaning. In deciding whether the words are capable of conveying a defamatory meaning the court will reject those B meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation.

[55] In *Datuk Husam Musa v. The New Straits Times Press (M) Bhd & Ors* [2013] 1 LNS 798; [2014] 8 MLJ 370, which concerned an article in the New Straits Times entitled "Husam: They go or I'll quit, Nik Aziz won't allow C blue eyed to resign if he wishes" which concerned the same subject matter as in the impugned report in the instant case, Lee Heng Cheong JC (now J), in holding that the words complained of therein were incapable of giving rise to the defamatory imputations relied on by the plaintiff (which incidentally are identical to the imputations relied on in the statement of claim in the D instant case) stated that as follows at p. 380C-D and at p. 382D-E:

(e) The issue of whether the words complained of, in their natural and ordinary meaning, are defamatory of the plaintiff, is an issue of construction, not evidence. *Since the plaintiff relies only on the natural and ordinary meaning as no innuendo is pleaded, the relevant words must be* E *construed in their ordinary and natural meaning.* …

(o) Thus this court finds that the words complained of in the *New Straits Times* edition of 23 November 2009 do not bear and are not capable of bearing the meanings or imputations as contended by the plaintiff. **Simply put, the words are not defamatory of the plaintiff, when construed objectively in their natural and ordinary meaning.** F

(emphasis added)

[56] Based on the cases referred to above, it is clear that two principles of law emerge from them which are as follows:

G (i) the court has to, in the first instance, determine (in accordance with the principles of construction) whether on a proper construction of the impugned news report the words complained of give rise to the imputations pleaded by the plaintiff in his statement of claim;

(ii) that in undertaking that exercise, the court is conducting a pure H construction of the impugned news report and not the evaluation of the evidence adduced by the parties before the court. In other words, the question to be answered is whether the impugned news report is capable of giving rise to the imputations relied upon by the plaintiff and not just what are the meanings at large that they are capable of giving rise to;

I (iii) it is trite law that in order to disclose a cause of action for defamation in law, the statement of claim must particularise the cause of action for defamation;

(iv) the question at the preliminary stage is not whether the words complained of (construed in its proper context) are false but whether they are defamatory in nature in the sense contended by the plaintiff in his statement of claim;

(v) falsity is presumed if the words are found to be defamatory in the sense contended by the plaintiff; and

(vi) put in another way, are the words complained of (construed in the context of the entire impugned news report) capable of giving rise to the imputations relied on by the plaintiff in his statement of claim? If they are not, then that is the end of the matter. If they are capable of giving rise to the imputations relied on by the plaintiff, then the court has to determine whether they are in fact defamatory of and concerning the plaintiff.

[57] The relevant principles involved in that intended determination can be stated briefly as follows:

(i) in ruling on meaning, the court is not determining the actual meaning but delimiting the outside boundaries of the possible range of meanings from those contended by the plaintiff to bear in his statement of claim.

(ii) the general principles involved in that respect have been neatly summarised in the judgment of Ramly Ali J (later JCA and now FCJ) in *Soh Chun Seng v. CTOS-emr Sdn Bhd* [2004] 5 CLJ 46; [2003] 4 MLJ 180 "Soh Chun Seng", at p. 189D to 190A as follows:

> … In construing the meanings of the words complained of as pleaded by the plaintiff, the court must do so in the context of the entirety of the contents of exh P2.
>
> In *Gatley on Libel and Slander* (9th Ed) at p. 96 the learned author states:
>
> > It is necessary to take into consideration, not only the actual words used, but the context of the words.
>
> At p. 97, the learned author continues:
>
> > It follows from the fact that the context and circumstances of the publication must be taken into account and that the plaintiff cannot pick and choose parts of the publication which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away the sting.
>
> Our courts have also pronounced the same principle to be the law applicable in Malaysia. In *Ratus Mesra Sdn Bhd v. Shaik Osman Majid & Ors* [1999] 3 MLJ 529, Kamalanathan Ratnam J at p. 535 stated that:

A

> I agree that the test to be applied when considering whether a statement is defamatory of a plaintiff is an objective one in that it must be given a meaning in which a reasonable man would understand it (See: *Gatley on Libel & Slander* (9th Ed) para 3.12) and that for this purpose, that is, in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article.

B

In another case, *Noor Asiah bte Mahmood & Anor v. Randhir Singh & Ors* [2000] 2 MLJ 175, the High Court has also stated at p. 190:

> I must hasten to add that the same authority reflected the view that a claim for libel whilst not to be founded on a headline or photograph in isolation from the related text, the question whether the article was defamatory had to be answered by reference to the response of the ordinary reasonable reader to the **entire publication**. (emphasis added)

C

D

(a) At p. 190B, the learned judge summarised further the applicable principles in construing whether the words complained of are capable of bearing defamatory meanings or not as follows:

> In construing the words complained of to determine if they are capable of bearing defamatory meanings or not, the court must also endeavour to read those words through the eyes of the 'hypothetical reasonable person'. In *Gatley on Libel & Slander* (9th Ed) at p. 80, the learned author opines as follows:

E

> If words conveyed a defamatory imputation to those to whom they were published, but would not have done so to the hypothetical reasonable person in that position, they are not defamatory. The essence of libel is the publication of written words to a person or persons by whom they would be reasonably understood to be defamatory of the plaintiff' so that the mere fact that the hearers understood the language in a defamatory sense does not make it defamatory unless they were reasonably justified in so understanding it. In the case of words defamatory in their ordinary sense it is not permissible to call evidence to prove that anyone did understand the words in a defamatory sense, but the question is simply whether reasonable people would have so understood them.

F

G

H

> At p. 81, the learned author of Gatley postulates the following question as an appropriate one to asked in trying to get the natural and ordinary meaning of the words complained of. The question is:
>
> What would the words convey to the mind of the ordinary, reasonable, fair-minded reader?

I

(b) At p. 190H to 191A-B, the learned judge further noted as follows: A

> The court is also of the view that in construing what the words complained of might reasonably mean, such meanings that can only be arrived at by a strained or utterly unreasonable interpretation are to be rejected.

[58] Those are the general statements of the principles involved. B

[59] However, there are further principles that have been laid down by high authority and established in the practitioners' text on defamation.

[60] I shall refer to some of these additional principles as well as those that personify the principles just mentioned above that have been cited and referred to by the learned counsel for the defendants and which the court agrees with and adopts in this judgment. C

[61] In *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 151, the House of Lords held, *inter alia*, that the ordinary reader is fair minded and is not avid for scandal and neither is he unduly suspicious nor does he jump to conclusions on the basis of conjecture or in other words he does not jump to hostile conclusions on flimsy evidence (as per Lord Reid at pp. 153 to 155, Lord Morris at p. 163). D

[62] In the binding authority (1896) of the House of Lords in *Nevill v. Fine Art and General Insurance Co* [1895-99] All ER Rep 164, it was held as follows in the Headnotes at p. 164: E

> In a libel action the question whether the words complained of are capable of bearing a defamatory meaning is one for the judge. In deciding that question the judge must take into consideration not only the actual words complained of, but also their context and the person or persons to whom they were published, and the test to be applied is not whether some person might have understood the words as reflecting adversely on the plaintiff, but whether an ordinary reasonable man would so construe them. *If the words are to be held to be defamatory by reason of an inference to be drawn from them, it must be a natural and necessary inference.* (emphasis added) F G

[63] Lord Halsbury LC in his leading judgment stated the last principle mentioned above as follows at p. 199I in his own words:

> … that because some persons may choose, not by the reason of the language itself, but by reason of some fact to which it refers, to draw an unreasonable inference, it does not follow that therefore such matter is libellous. H

[64] In the same case Lord Shand, at p. 169D, confirms the approach to be taken in construing inferences from the words complained of as follows:

> It is said that an imputation may be inferred but that inference certainly is not a necessary inference; and, as it appears to me, it is neither a natural nor a reasonable inference to draw from the words in the circumstances in which we find them. I

[65] Further, Lord Halsbury confirmed, at p. 166F-G, the observations of Brett LJ at p. 541 in *Capital and Counties Bank v. Henty* [1880] 5 CPD 514 ("Henty's case") as follows:

> In the original argument of Henty's Case (1) in the Court of Appeal I observe that BRETT, LJ, says this (5 CPD at p. 541):
>
> > It seems to me unreasonable that, when there are a number of good interpretations, the only bad one should be seized upon to give a defamatory sense to the document. Therefore I am of opinion that this document could not reasonably be taken in a defamatory sense by those to whom it was published according to the primary meaning of the language used in it.
>
> And in this House LORD WATSON affirmed the same proposition in language to which LORD SHAND has already called attention. It would not be enough, therefore, in this case to say that some persons might have understood these words as conveying some reflection upon the honour or business capacity of Lord William Nevill. That stands, therefore, as it appears to me, a long way distant from what was done in Henty's Case (1) where a communication was made to the persons who had to make payments to the brewer in that case, and they were informed that the cheques of such and such a bank were not to be received in future. That undoubtedly, as LORD WATSON points out, might possibly, or would probably, by some persons have been understood to convey some reflections upon the solvency of the particular bank upon which the cheques were drawn. But he goes on to confirm what BRETT, LJ, says, which seems to me to be good sense - that because some persons may choose, not by reason of the language itself, but by reason of some fact to which it refers, to draw an unfavourable inference, it does not follow that therefore such matter is libellous.

[66] Hence, it is clear that the ability of the hypothetical ordinary, reasonable fair minded reader to read an implication more readily than a lawyer is circumscribed by the caveat that the implication must be natural, necessary and reasonable and that where there are a number of good interpretations the ordinary reasonable fair minded reader does not and will not seize on a bad interpretation or the only interpretation which gives a defamatory sense to the document when there is a good interpretation to it.

[67] In *Sim v. Stretch* [1936] 2 All ER 1237, Lord Atkin, in another binding authority, in the House of Lords, held that a telegram sent by the defendant *vis-a-vis* his new maid Edith which said, "Edith has resumed her service with us today. Please send her possessions and the money you borrowed, also her wages to Old Barton-Sim" were not reasonably capable of bearing the defamatory imputations contended for by the plaintiff *viz*. that the plaintiff was in pecuniary difficulties, that by reason thereof he had been compelled to borrow and had in fact borrowed money from his housemaid, that he had failed to pay her wages, and that he was a person to whom no one ought to give any credit.

[68] Lord Atkin having referred to the principle that was referred to in the paragraph above observed as follows at p. 1241:

> But to make an imputation which is based upon the existence of facts unknown and not to be inferred from the words attacked is surely exactly to come under the ban of LORD ESHER [then BRETT, LJ] cited in *Nevill v. Fine Art & General Insurance Co (2)* at p. 73:
>
> > It seems to me unreasonable that, when there are a number of good interpretations, the only bad one should be seized upon to give a defamatory sense to the document.
>
> It is not a case where there is only the choice between two reasonable meanings, one harmless and one defamatory. It is a case where there is only one reasonable meaning which is harmless, and where the defamatory meaning can only be given by inventing a state of facts which are not disclosed, and are in fact non existent.

[69] What then is the standard of reasonable understanding of the ordinary reasonable fair minded reader?

[70] That aspect of the law of defamation is yet again neatly summarised in *Gatley on Libel and Slander*, 11th edn, Sweet & Maxwell, 2008 as follows:

> 3.15 **Reasonable understanding**. If words conveyed a defamatory imputation to those to whom they were published, but would not have done so to the hypothetical reasonable person in that position, they are not defamatory. "The essence of libel is the publication of written words to a person or persons by whom they would reasonably be understood to be defamatory of the claimant" so that *the "mere fact that the hearers understood the language in a defamatory sense does not make it defamatory unless they were reasonably justified in so understanding it*". In the case of words defamatory in their ordinary sense, it is unnecessary to prove that anyone did understand the words in a defamatory sense, as long as it is proved that reasonable people would have so understood them. It is true that the claimant may, by pleading an innuendo, show that the words are defamatory by reason of some special fact outside the statement itself and known to those to whom it was published...but even here the question is the sense in which a reasonable person with that knowledge would have given to the words …
>
> **For the purposes of the law of defamation, the words have only a single "right" meaning**. This does not mean that more than one meaning cannot be left to the jury, for that happens every day; but it does mean that the jury or other fact finder must ignore the undoubted fact that in many cases it is likely (or even obvious) that different readers will have understood the publication in different ways, some defamatory, others not. (emphasis added)

[71] Another pertinent principle involved in the construction of the impugned news report is that it is contrary to the law of libel, for a plaintiff to sever and rely only on isolated passages in a publication and contend that they were defamatory of him.

[72] The meaning to be ascribed to words allegedly defamatory has to be construed by taking the contents of the publication as a whole.

[73] *Gatley on Libel and Slander*, 11th edn, Sweet & Maxwell, 2008 has expressed that principle as follows:

> 3.30 **Publication must be taken as a whole**. It follows from the fact that the context and circumstances of the publication must be taken into account, that the claimant cannot pick and choose parts of the publication which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away the sting. If "in one part of the publication something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and antidote must be taken together"... Thus in the case of a newspaper article the defendant is entitled to have considered as part of the claimant's case the whole of the piece from which the alleged libel is extracted.

[74] The principle of law that is referred to above is derived from the House of Lords' decision in *Charleston and Another v. News Group Newspapers Ltd and Another* [1995] 2 All ER 313 ("*Charleston and Another*"), wherein a Sunday newspaper with an apparent circulation of ten million copies published, *inter alia*, two photographs in which the heads of the plaintiffs were superimposed on the bodies of two persons who were engaged in sexual intercourse or sodomy.

[75] The banner headline at the top of the page read: "Strewth! What's Harold up to with our Madge?" Below the photographs was another smaller, but still prominent, headline, which stated "Porn shocker for Neighbours Stars".

[76] The plaintiffs brought an action against the defendants alleging that the photographs and the headlines were libellous because in their natural and ordinary meaning it was contended that the words meant or were understood to mean that the plaintiffs had posed for pornographic photographs or were willing participants in the production of the photographs.

[77] The text of the article negatived the suggestion. The judge at first instance held that the publication was not capable of bearing the meanings pleaded in the statement of claim.

[78] The Court of Appeal upheld the judge and eventually the House of Lords too upheld the judge.

[79] However, it is the principles of construction in the law of defamation that emerged from that decision of the House of Lords that require particular attention.

[80] Counsel for the plaintiffs in that case contended that it is possible and legitimate to identify a particular group of readers of a mass circulation newspaper like the first defendant's newspaper who read only part of a publication which conveys to them a meaning injurious to the reputation of the plaintiff and that in principle the plaintiff should be entitled to damages for the consequent injury he suffers in the estimation of this group.

[81] In rejecting that argument Lord Bridge stated as follows:

> The first formidable obstacle which Mr. Craig's argument encounters is a long and unbroken line of authority the effect of which is accurately summarised in *Duncan and Neill on Defamation* (2nd edn, 1983) p. 13, para 4.11 as follows:
>
> > In order to determine the natural and ordinary meaning of the words of which the plaintiff complains it is necessary to take into account the context in which the words were used and the mode of publication. Thus a plaintiff cannot select an isolated passage in an article and complain of that alone if other parts of the article throw a different light on that passage.
>
> The *locus classicus* is a passage from the judgment of Alderson B in *Chalmers v. Payne* (1835) 2 Cr M & R 156 at p. 159, 150 ER 67 at p. 68, where he said:
>
> > But the question here is, whether the matter be slanderous or not, which is question for the jury; who are to take the whole together, and say whether the result of the whole is calculated to injure the plaintiff's character. *In one part of this publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion; the bane and antidote must be taken together.*
>
> (emphasis added)

[82] Quite apart from the prohibition against severance in construing the words complained of, on the authority of *Charleston and Another*, the court is of the considered view that in the case of a publication in the mass media, a plaintiff may not succeed even though there is no doubt that as a matter of fact some of the audience or even a considerable portion of the audience may have understood the publication in a defamatory sense.

[83] The principle of the bane and antidote, which was unequivocally confirmed in *Charleston and Another*, has been imported into our jurisdiction and liberally applied by our Court of Appeal in *Keluarga Communication Sdn Bhd v. Normala Samsudin & Another Appeal* [2006] 2 CLJ 46 ("Keluarga Communication").

[84] In *Keluarga Communication*, Zulkefli Makinudin JCA (later FCJ and now CJM) speaking for the Court of Appeal stated as follows at p. 58:

> [16] At the outset we would state that the test to be applied when considering whether a statement is defamatory of a plaintiff is well settled in that it is an objective one in which it must be given a meaning a

reasonable man would understand it and for that purpose, that is, in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article. *Gatley on Libel and Slander*, 10th edn on this point at pp. 108 and 110 *inter alia* states as follows:

> It is necessary to take into consideration, not only the actual words used, but the context of the words.
>
> It follows from the fact that the context and circumstances of the publication must be taken into account, that the plaintiff cannot pick and choose parts of the publication which, standing alone, would be defamatory. *This or that sentence may be considered defamatory, but there may be other passages which take away the sting.* (emphasis added).

[85] It is pertinent to consider the facts of the decision in *Keluarga Communication* to appreciate the ambit of the bane and antidote principle as applied by our Court of Appeal.

[86] The brief facts of *Keluarga Communication* were as follows: The defendant being the publisher of Mingguan Wanita, a monthly magazine, had published in that magazine, an article of and concerning the plaintiff which the plaintiff contended was defamatory of her. The impugned article commenced on the front cover of the magazine which portrayed a photograph of the plaintiff with the words (in the nature of a question) 'Mala tebus talak RM3 Juta?' and within the magazine, photographs of the plaintiff and an article under the heading "Jiwa lara seorang Normala, Hatinya berkata iya, bibirnya berkata tidak!".

[87] The plaintiff contended that the aforesaid words in their natural and ordinary meaning were defamatory of her and were understood to bear the meanings and inferences that she bought herself off from her marriage bond by paying (her ex-husband) the sum of RM3 million; that there was a third person in the plaintiff's marriage; she attempted to deny the aforesaid by attributing the same as an ordinary occurrence; she was not forthright; the third person in the plaintiff's life had paid the RM3 million to the plaintiff's husband; the plaintiff is an immoral person; the plaintiff's divorce is the result of her extra-marital affairs; the plaintiff is selfish and/or self centred and/or mercenary; and the plaintiff does not care for the welfare and happiness of her children.

[88] The full impugned article in Bahasa Malaysia and the agreed English translation can be found at pp. 52 to 56 of the report.

[89] The learned trial judge in the court below found that the caption and the words complained of were defamatory of the plaintiff and held that they bore the following defamatory meanings of the plaintiff:

(i) that the plaintiff was a person whose marriage bond had a price tag and that for a payment of RM3 million she was bought off her marriage vows;

(ii) the plaintiff was a loose charactered woman with lax morals; A

(iii) the plaintiff bought herself off from her marriage bond by paying her ex-husband RM3 million; and

(iv) that it imputed adultery, unchastity or immoral behaviour on the part of the plaintiff. B

[90] The defendants appealed, *inter alia*, on the grounds that the learned judge had erred in concluding that the caption and the words complained of were defamatory of the plaintiff when the learned judge failed to consider the article in its entirety.

[91] The Court of Appeal agreed with the defendants. C

[92] Zulkefli Makinudin JCA speaking for the Court of Appeal referred to the 11th paragraph in the 16 paragraphed impugned article and stated as follows at pp. 60 to 61:

> [24] It is our considered view had the learned trial judge taken into account the entirety of the article, he could not possibly have concluded that the words complained of imputed adultery, unchastity or immoral behaviour on the part of the plaintiff or meant that she was a loose charactered woman with lax morals. We therefore find the learned trial judge had erred when he concluded that the words complained of imputed adultery, unchastity or immoral behaviour on the part of the plaintiff by not giving consideration to the words Normala was disappointed because while she avoided temptations, her fidelity has been wasted. D E
>
> …
>
> [26] On this first ground of appeal alone as put forward by the defendant we would have allowed this appeal in that the caption and the words complained of as comprised in the said article are not defamatory of the plaintiff F

[93] There is one other principle in respect of the construction of an impugned article in an action for defamation. It is called the "single meaning rule". G

[94] This rule is very succinctly set out in the following excerpt of the judgment of Lord Bridge of Harwich in Charleston and another in response to the plaintiffs' counsel's argument which has been referred to above: H

> At first blush this argument has considerable attractions, but I believe that it falls foul of two principles which are basic to the law of libel. The first is that, where no legal innuendo is alleged to arise from extrinsic circumstances known to some readers, the 'natural and ordinary meaning' to be ascribed to the words of an allegedly defamatory publication is the meaning, including any inferential meaning, which the words would convey to the mind of the ordinary, reasonable, fair-minded reader. This proposition is too well established to require citation of authority. I

The second principle, which is perhaps a corollary of the first, is that, although a combination of words may in fact convey different meanings to the minds of different readers, the jury in a libel action, applying the criterion which the first principle dictates, is required to determine the single meaning which the publication conveyed to the notional reasonable reader and to base its verdict and any award of damages on the assumption that this was the one sense in which all readers would have understood it. The origins and the implications of this second principle are the subject of a characteristically penetrating analysis in the judgment of Diplock LJ in Slim v. Daily Telegraph Ltd [1968] 1 All ER 497, at 504-506, [1968] 2 QB 157 at 171-174, from which it will, I think, be sufficient to cite the following passages:

> Everyone outside a court of law recognises that words are imprecise instruments for communicating the thoughts of one man to another. The same words may be understood by one man in a different meaning from that in which they are understood by another and both meanings may be different from that which the author of the words intended to convey; *but the notion that the same words should bear different meanings to different men, ... Where, as in the present case, words are published to the millions of readers of a popular newspaper, the chances are that if the words are reasonably capable of being understood as bearing more than one meaning, some readers will have understood them as bearing one of those meanings and some will have understood them as bearing others of those meanings. But none of this matters. What does matters is what the adjudicator at the trial thinks is the one and only meaning that the readers as reasonable men should have collectively understood the words to bear. That is "the natural and ordinary meaning" of words in an action for libel* ... Juries, in theory, must be unanimous on every issue on which they have to adjudicate; and, since the damages that they award must depend on the defamatory meaning that they attribute to the words, they must all agree on a single meaning as being the "right" meaning. So the unexpressed major premise that any particular combination of words can bear but a single "natural and ordinary meaning" which is "right", survived the transfer from judge to jury of the function of adjudicating on the meaning of words in civil actions for libel.

(emphasis added)

The Textual Analysis Of The Impugned News Report In This Case

[95] The test for ascertaining whether an impugned report or article bears a defamatory nature has been expressed in many ways depending on the nature of the subject matter of the impugned report or article.

[96] The test for personal defamation in our jurisdiction that is oft quoted is that which arises from the House of Lords decision in *Sim v. Stretch*, *supra*, which was expressed by Mohamed Azmi J (later LP) in *Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 1 LNS 146; [1973] 2 MLJ 56, at p. 58D as follows:

> Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?

[97] Reverting back to the instant case, the court shall now conduct a textual analysis of the impugned news report in order to determine whether the impugned passages have a tendency to excite against the plaintiff the adverse opinion of others although no one believes the statement to be true or whether the words complained of in the impugned passages will tend to lower the plaintiff in the estimation of right thinking members of society generally.

[98] The impugned news report starts with a headline in the form of a question as to whether the plaintiff was resigning. The first paragraph narrates that the plaintiff, who is the Deputy Commissioner II of PAS Kelantan, is said to be desirous of giving up all his posts in the party and government which the writer says reflects yet another episode of confusion or disorder in that party.

[99] And the readers' eye need to travel no further than the second paragraph to know the answer to the poser in the headline of the impugned news report, wherein it is confirmed that the plaintiff is not resigning as that desire of the plaintiff has been rejected by no less than the Spiritual Adviser of PAS and the Menteri Besar of Kelantan ("the Menteri Besar").

[100] The third paragraph says on the contrary the Menteri Besar had given five days leave to the plaintiff to rest and calm down without actually disclosing why he needed to rest and calm down.

[101] In para. 15 of the impugned news report, the reader would note that Syed Azidi, the plaintiff's righthand man has said that during the period that the plaintiff is on leave, the plaintiff will be undergoing surgery, having already delayed it for two months.

[102] The fourth paragraph narrates that the plaintiff's action in wanting to resign is said to be attributable to the expose of the internal turmoil in PMBK which is helmed by Ir. Abdul Ariffahmi Ab Rahman. No mention is made of what that "kemelut dalaman" was and nowhere in the article is the plaintiff expressed to be part of PMBK.

[103] It is trite law that any inference arising therefrom must be natural, necessary and reasonable.

[104] However, in the instant case, any negative inference can only arise by inventing a state of facts not disclosed in the report.

[105] The only inkling about that internal turmoil is found in the fifth paragraph of the report which narrates that Abdul Arifahmi who helms PMBK and is the son-in-law of the Menteri Besar is being investigated by the Anti Corruption Commission of Malaysia (ACCM).

[106] At the bottom of the report on the front page, the ordinary reasonable fair minded reader is invited to proceed to p. 2 of the newspaper wherein the continuation of the report is identified by its original headline on the front page.

[107] On p. 2 of the newspaper, at para. 6, the reader is immediately confronted with the statement of PAS Kelantan *viz* Mohd Zaki Ibrahim, who is identified as the Secretary of the Public Liaison Body of PAS Kelantan.

[108] It is therein reported that Mohd Zaki Ibrahim said "all that are pure rumours and that they (the Public Liaison Body of PAS) do not want to interfere in the issue which was being faced by Nik Aziz because it had nothing to do with politics (the natural and reasonable inference being it concerned the position of Nik Aziz's son-in-law who helmed PMBK and was being investigated by the ACCM).

[109] The court is of the considered view that the ordinary reasonable fair minded reader upon reading the entire report would reasonably note the categoric assertion of the official source of PAS that it was all pure rumours and in fact untrue is mentioned no less than three times in the context of the report at paras. 6, 16 and 18.

[110] The seventh and eighth paragraphs (address what was said in para. 4 on the front page) wherein at para. 7 it is narrated that a source says that the plaintiff had expressed his desire to resign to Nik Abdul Aziz at a four eyed meeting on last Tuesday.

[111] It is then categorically stated at para. 8 that (in the words of the source) that, at that meeting, the plaintiff had explained to Nik Aziz that the plaintiff was not involved or the mastermind (menjadi dalang di sebalik) behind what had happened in PMBK and that the plaintiff's explanation was accepted by no less than the Spiritual Leader of PAS and the Menteri Besar of Kelantan.

[112] Again no facts are disclosed as to what was it that had happened in PMBK save that the earlier paragraph ie, the fifth paragraph, had said that Ir. Abdul Arifahmi was being investigated by the authorities but it was made clear that the plaintiff was not in any way involved in the 'kemelut dalaman' PMBK as the Menteri Besar himself had accepted the plaintiff's explanation.

[113] The ordinary reasonable fair minded reader will also note at para. 10 that the plaintiff has been quoted in an online news portal that there was a conspiracy to oust him from the state administration, by sparking in English or "mencetuskan" in Malay a rift between the plaintiff and the Menteri Besar.

[114] Now, the only reasonable inference that ordinary reasonable fair minded reader can make in those circumstances was that it was because of the conspiracy against him that he had to meet the Menteri Besar to explain his position in respect of what is not disclosed about the turmoil in PMBK (save that pertaining to the Menteri Besar's son-in law) of which the plaintiff was absolved by the Menteri Besar, thereby neutralising any suggestion that he was involved in the undisclosed nature of the internal turmoil in PMBK.

[115] At this point, the ordinary reasonable fair minded reader would have obtained an immediate impression that the whole fuss *vis-a-vis* the plaintiff was the work of undesirable elements who were out to oust the plaintiff from the state administration. The natural inference there, is that his offer to resign was made to the Menteri Besar and that it arose if the Menteri Besar was suspicious of him or did not believe him, but it is said that the Menteri Besar accepted the plaintiff's explanation and rejected his wish to resign.

[116] Upon reading the entire report, the ordinary reasonable fair minded reader would realise the plaintiff was not resigning after all and would reasonably infer that it was just the work of conspirators against the plaintiff given the Menteri Besar's acceptance of the plaintiff's explanation and the repeated denials by YB Zaki Ibrahim.

[117] More importantly, the ordinary reasonable fair minded reader or the right thinking members of society generally would say that the entire speculation were pure rumours and untrue as PAS Kelantan has issued an official statement about it. Therefore, the bane and the antidote must be taken together.

[118] As Lord Halsbury has stated in *Nevill v. Fine Art And General Insurance Co*, *supra*, "that because some persons may choose, not by reason of the language itself, but by reason of some fact to which it refers, to draw an unfavourable inference, it does not follow that therefore such matter is libellous".

[119] In the light of all that has just been narrated, the question that begs to be answered is, are the words complained of (read in its entire context and interpreted in accordance with the principles referred to above) capable of giving rise to or being understood by the ordinary reasonable fair minded reader as giving rise to the following imputations contended by the plaintiff in his statement of claim:

(i) he was a person who took advantage to pressure other people;

(ii) he was dishonest to his colleagues;

(iii) he was fond of quarrelling and conflict;

(iv) he was divisive;

(v) he was easily discouraged in the struggle;

(vi) he was a flip flop politician;

(vii) he had difficulty listening to and accepting the true views of others; and

(viii) he was cocky and arrogant

and, therefore, these negative imputations about and concerning the plaintiff that can arouse suspicion on the credibility and integrity of the plaintiff in the general perception of the public and cause the right thinking members of society generally to form a low opinion of the plaintiff.

[120] Having conducted a detailed and exhaustive textual analysis of the words complained of and the impugned passages in the impugned report, the court is satisfied that the impugned news report read in its entirety and construed objectively (having regard to the trite principles of interpretation referred to and set out above), cannot reasonably be capable of giving rise to any of those contended imputations in their natural and ordinary meaning to the right thinking members of society generally and it does not as a whole have a tendency to lower the plaintiff in the estimation of right thinking members of society generally.

[121] The other paragraphs in the article would negative any suggestion of the natural and ordinary meanings as contended by the plaintiff. The court will now refer to them.

[122] The court was of the considered view (in the absence of any innuendo being pleaded) that the ordinary reasonable fair minded reader who reads the words complained of in the context of the entire report, would perceive him as an important leader in Kelantan who was indispensable to the Menteri Besar in assisting the latter in administering the state of Kelantan and hence, commanding great respect from the spiritual leader of PAS and the Menteri Besar of Kelantan to the extent that there were parties who were out to oust him from the state administration.

[123] It further characterises the plaintiff as a principled and selfless politician and a leader who was prepared to put the party's interest above his own in the event he became a liability to the party and thus a politician and a leader who had independence of thought and courage of opinion as a politician and as a leader.

[124] Finally, the report conclusively dispelled the speculation of his intended resignation as being purely rumours and as being untrue through no less than the official source of the party *viz*. Secretary of the Public Liason Body of PAS.

> 2. Namun hasrat itu tidak dipersetujui oleh Mursyidul Am Pas yang juga Menteri Besar Kelantan, Datuk Nik Abdul Aziz Nik Mat.
>
> 6. Namun Pas Kelantan melalui Setiausaha Badan Perhubungannya, Mohd Zaki Ibrahim berkata perkara itu hanya khabar angin dan mereka tidak mahu mencampuri isu yang dihadapi Nik Abdul Aziz kerana menyifatkan ia tidak ada kena-mengena dengan politik.

8. "Husam bertemu dengan Nik Abdul Aziz untuk menjelaskan bahawa beliau tidak terlibat atau menjadi dalang disebalik apa yang berlaku dalam PMBK dan penjelasan itu diterima, tetapi hasratnya untuk meletakkan jawatan ditolak". A

10. Hari ini, sebuah portal berita melaporkan Husam mendakwa wujud konspirasi untuk menyingkirkan beliau daripada pentadbiran kerajaan negeri dengan mencetuskan perbalahan diantara beliau dengan Nik Abdul Aziz. B

12. Syed Azidi yang lebih dikenali dengan laman blognya Kickdefella, pula dilihat sebagai antara orang kanan Husam.

13. Sumber itu berkata, dalam tempoh cuti tersebut, Husam juga akan menjalani pembedahan tulang belakang selepas ditangguhkan sejak dua bulan lalu. C

14. "Husam sebelum ini beberapa kali menyatakan kesediaanya untuk berundur sekiranya beliau menjadi liabiliti kepada parti".

15. "Tetapi khidmat beliau masih diperlukan dalam membantu Nik Abdul Aziz mentadbir negeri ini," katanya. D

16. Sementara itu, Mohd Zaki menafikan perkara tersebut dan menyifatkannya sebagai khabar angin.

18. Ia khabar angin sahaja dan jika benar sudah tentu dalam mesyuarat hari ini ada dibincangkan (perkara ini). E

[125] In the circumstances as set out above, an ordinary reasonable fair minded reader would not be reasonably justified in coming to the conclusion that the words complained of read in its entirety were defamatory of the plaintiff as contended by the plaintiff in his SOC or otherwise. F

[126] The court was satisfied that the words read as a whole do not impute to the plaintiff any dishonest or discreditable conduct or motive or a lack of integrity based on the following reasons:

(i) the ordinary reader does not and will not seize on a defamatory meaning when there are good interpretations available. In any event it is not permissible to make an imputation or inference based on existence of facts undisclosed in the impugned news report; G

(ii) the imputations pleaded by the plaintiff in his SOC are a strained, forced or utterly unreasonable interpretation of the words in the circumstances that the court finds them; H

(iii) the words complained of are not defamatory as contended by the plaintiff from the primary meaning of the language used in it; and

(iv) the bane and antidote must be taken together. I

[127] Finally, it is noteworthy that in *Datuk Husam Bin Musa v. The New Straits Times*, *supra*, inspite of the fact that the words complained of therein were far more graphic the same plaintiff confirmed thrice in cross-examination that the article was complimentary of him whilst he appears to take a different position here.

Conclusion

[128] In arriving at this conclusion, the court would like to quote the astute observations of Lord Bingham of Cornhill in the House of Lords in the case of *McCartan Turkington Breen (a firm) v. Times Newspapers Ltd* [2000] 4 All ER 913 some 14 years ago on the role of the press in a modern participatory democracy at p. 922:

> 1. In a modern, developed society it is only a small minority of citizens who can participate directly in the discussions and decisions which shape the public life of that society. The majority can participate only indirectly, by exercising their rights as citizens to vote, express their opinions, make representations to the authorities, form pressure groups and so on. But the majority cannot participate in the public life of their society in these ways if they are not alerted to and informed about matters which call or may call for consideration and action. It is very largely through the media, including of course the press, that they will be so alerted and informed. The proper functioning of a modern participatory democracy requires that the media be free, active, professional and enquiring. For this reason the courts, here and elsewhere, have recognised the cardinal importance of press freedom and the need for any restriction on that freedom to be proportionate and no more than is necessary to promote the legitimate object of the restriction.
>
> 2. Sometimes ... the role of the press is different. It is that of reporter. The press then acts, in a very literal sense, as a medium of communication.

[129] In the premises, the court dismissed the plaintiff's claim with costs of RM45,000 to be paid by the plaintiff to the first and second defendants.